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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,151	12/27/2000	John D. Marshall	EKO000200	8710
34690	7590	04/05/2006		EXAMINER
RIMAS LUKAS 2707 18TH STREET SAN FRANCISCO, CA 94110				FLANDERS, ANDREW C
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/751,151	MARSHALL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrew C. Flanders	2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,36-38 and 71-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,36-38 and 71-73 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 January 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 3, 36, 38, 71 and 73** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueno (U.S. Patent 5,859,826) in view of Best (U.S. Patent 2,265,097).

Regarding **Claims 1, 36 and 71**, Ueno discloses:

A method for automatic digital audio mixing of at least two digital audio files (Fig. 1), comprising:

reading at least two digital audio files (Fig. 9 and data of the channels are fed to input terminals; col. 12 lines 35 - 39);

automatically determining scale factors for scaling each of said digital audio files based on an analysis of said at least two digital audio files by a digital processing unit; wherein each scale factor is based on an analysis of each of said at least two digital audio files relative to each other (Fig. 10 element 141; the common parameter extractor analyzes the dependence of the channel with respect to the data of the channels handled in common... in order to find the scale parameters of the channel under consideration; col. 12 lines 60 – 67)

applying each said scale factor to each of said digital audio files respectively to create scaled digital audio files (i.e. setting scale factors in the encoder; col. 15 lines 25 – 29)

combining each of said scaled digital audio files into a single audio recording output as a digital file on a storage medium (i.e. the data is multiplexed into one track; Fig. 9 107; which can then be written to a recording medium as shown in Fig. 1).

Ueno does not explicitly disclose that the analysis is of the entirety of each said digital audio file.

Best discloses automatically varying the amplitude level of various sound sequence between the output of a sound reproducer and a sound recorder in

accordance with the predetermined average level of the respective sound sequences being reproduced; col. 2 lines 1 – 6. Applying this technique of a predetermined level of sound sequences to the scaling disclosed by Ueno reads upon the limitation of the analysis is of the entirety of each said digital audio file.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Best on the invention disclosed by Ueno. One would have been motivated to do so in order to avoid an output in which the average sound level varies from sequence to sequence; col. 1 in Best.

**Regarding Claims 3, 38 and 73,** in addition to the elements stated above regarding claims 1, 36 and 71, the combination further discloses:

receiving one of said at least two digital audio files from a user (the inputs of Ueno are not explicitly disclosed to be received from a user, however, they must be provided to the system in some manner. Whether they are applied automatically or manually, at some point the data must be created or applied by a user.)

**Claims 2, 37 and 72** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueno (U.S. Patent 5,859,826) in view of Best (U.S. Patent 2,265,097) and in further view of Frederick (U.S. Patent 5,768,126)

Regarding **Claims 2, 37 and 72**, in addition to the elements stated above regarding claims 1, 36, and 71, the combination fails to disclose wherein said method is performed within a server device operatively coupled over a network to a client device; wherein said automatic digital audio mixing is resident on the server and initiated upon receiving one of said at least two digital audio files from said client device.

Frederick discloses mixing software which can process streams of digital audio samples originating from a local area network; col. 1 lines 19 – 21, audio data 470 is received from the network interface and network audio data is always active in this example, audio received from the network contributes to the network and is mixed to be made audible; col. 13 lines 34 – 40.

Applying the mixer of the combination above to a computer based audio mixer as to receive audio from a network as taught by Frederick would thus perform said method within a server device operative coupled over a network to a client device. Since the network audio is always active the said automatic digital audio mixing is resident on the server and initiated upon receiving one of said at least two digital audio files from said client device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the mixer taught by the combination to the computer based mixer taught by Frederick. One would have been motivated to do so to create a computer audio mixer that achieves multie-stream audio functionality without interrupting existing application programs being run; col. 3 lines 24 – 28 of Frederick.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7546. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SINH TRAN  
SUPERVISORY PATENT EXAMINER

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